



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/633,005	08/04/2000	David G. Way	FN-3120	2260

7590 01/12/2005
BARTON E. SHOWALTER
BAKER, BOTTS, LLP
2001 ROSS AVENUE
SUITE 600
DALLAS, TX 75201-2980

EXAMINER

BELLO, AGUSTIN

ART UNIT	PAPER NUMBER
----------	--------------

2633

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

07

Office Action Summary	Applicant(s)	Applicant(s)	
	09/633,005	WAY, DAVID G.	
	Examiner	Art Unit	
	Agustin Bello	2633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16,18-20 and 22-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16,18-20,22 and 24-32 is/are allowed.
- 6) ☒ Claim(s) 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Handelman (U.S. Patent No. 6,574,018) in view of Scobey (U.S. Patent No. 5,583,683).

Regarding claim 23, Handelman teaches a fiber optic communication system, comprising: a plurality of emitters (column 11 lines 44), each emitter operable to communicate a signal over a respective initial channel, wherein each initial channel has a respective initial spectrum width; a plurality of modulators (column 11 lines 45), each modulator coupled to at least one of the plurality of emitters, wherein each modulator is operable to modulate data onto a signal; and a passband filter (reference numeral 130 in Figure 2), the filter coupled to at least one of the plurality of emitters, wherein the filter is operable to vary the initial spectrum width (e.g. via tuning of the filter) of at least one of the initial channels to form at least one new channel that utilizes a channel spacing of at least one of the initial channels, wherein the at least one new channel has a respective new spectrum width. Handelman differs from the claimed invention in that Handelman fails to specifically teach a plurality of passband filters each coupled at least one of the plurality of emitters. However, bandpass filters comprising a plurality of filters each coupled to at least one of a plurality of emitters is well known in the art. Scobey, in the same field of endeavor, teaches that such filters are well known in the art (Figure 4). One skilled in

Art Unit: 2633

the art would have been motivated to use the filter of Scobey since it allows for tunable multiplexing and demultiplexing functionality. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to employ the tunable filter of Scobey as the bandpass filter of Handelman.

Allowable Subject Matter

3. Claims 16, 18-20, 22, and 24-32 are allowed.

Response to Arguments

4. Applicant's arguments filed 10/7/04 have been fully considered but they are not persuasive. Claim 23 recites broader limitations than the allowable claims indicated above. The examiner maintains that the combination of references continues to read at least on this claim. In particular, Handelman teaches each element including varying the initial spectrum width of at least one of the initial channels (e.g. $\lambda_1 - \lambda_{N+L}$), to form at least one new channel (e.g. $\lambda_1 - \lambda_N$) that utilizes a channel spacing of at least one of the initial channels, wherein the at least one new channel has a respective new spectrum width. Scobey teaches the plurality of passband filters lacking in Handelman. As such, the examiner maintains the rejection of the claim based on the combination of references as stated above.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

Art Unit: 2633

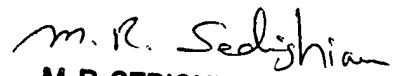
the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Agustin Bello whose telephone number is (571) 272-3026. The examiner can normally be reached on M-F 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571)272-3022. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AB


M. R. SEDIGHIAN
PRIMARY EXAMINER